

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

FEB 7 1997

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)	
)	
Review of the Commission's)	MM Docket No. 94-150
Regulations Governing Attribution)	
of Broadcast Interests)	
)	
Review of the Commission's)	
Regulations and Policies)	MM Docket No. 92-51
Affecting Investment)	
in the Broadcast Industry)	
)	
Reexamination of the Commission's)	MM Docket No. 87-154
Cross-Interest Policy)	
)	

**KING WORLD'S COMMENTS ON FURTHER NOTICE OF
 PROPOSED RULEMAKING**

As a leading independent syndicator/producer of first-run syndicated programming, King World Productions, Inc. ("King World") has a particular interest in one aspect of this proceeding, in which the Commission seeks to reevaluate its broadcast attribution rules.¹ The Commission has proposed a rule that would treat otherwise non-cognizable interests as attributable if those interests are held by a "program supplier." King World submits, and will show in these comments, that there is no valid reason to apply this rule to entities that

¹ Among other programs, King World distributes Inside Edition, Jeopardy!, The Oprah Winfrey Show and Wheel of Fortune.

are engaged in program syndication. If such a rule is adopted, the term “program supplier” should be limited to “networks” as defined in the Commission’s rules.

1. As the Commission points out in the Further Notice of Proposed Rulemaking,² the purpose of the attribution rules is to identify those interests or relationships that pose a “realistic potential” to adversely affect the values of program diversity and competition that underlie the multiple ownership and duopoly rules. Further Notice at ¶ 1. Historically, the attribution rules have defined this potential in terms of formal or de facto control of a television licensee. More recently, however, the Commission has become concerned that certain kinds of arrangements that fall short of bestowing control in the conventional sense may nonetheless enable the holder thereof to “induce a licensee . . . to take actions” that implicate or are inconsistent with the basic policy objectives underlying the multiple ownership rules. Further Notice at ¶ 19. The Commission’s proposal to treat as attributable otherwise non-cognizable investments by “program suppliers” in television stations rests on this influence theory. The hypothesis is that the contractual arrangement between program supplier and station affords the program supplier a means of influencing programming (and other core function) decisions in stations in which the supplier holds an otherwise passive or minority voting interest.

² In the Matter of Review of the Commission’s Regulations Governing Attribution of Broadcast and Other Interests, MM Docket No. 94-150 et. al, (hereinafter “Further Notice”).

2. Whatever merit the influence hypothesis may have, there is neither evidence to suggest nor reason to believe that non-network entities (like King World) engaged in syndication of programming possess sufficient leverage by virtue of their contractual relationships with stations to warrant inclusion within the category of program suppliers to which this attribution rule would apply. Both the Further Notice and the original notice of proposed rulemaking in this docket³ explain that the program supplier attribution proposal was prompted by several recent cases involving arrangements between television networks and stations that were affiliated with that network. Further Notice at ¶ 18; Attribution Notice at ¶ 3. There is simply no evidence that syndicators have engaged in the kinds of arrangements and transactions that gave rise to the program supplier attribution proposal.

3. Nor is there any reason to believe that the nature of the contractual arrangements between a syndicator and a station is likely in the future to confer upon the syndicator the “realistic potential” to significantly influence programming or other core operating functions of that station. To the extent that a contractual relationship confers any power at all to influence a station’s decisions, it is the economic relationship underlying the contract, rather than its mere existence, that supplies the leverage. In this respect, there is a sharp difference between network affiliation relationships and the relationships between a syndicator and station. Network affiliation agreements entail compensation paid by the network

³ In the Matter of Review of the Commission’s Regulations Governing Attribution, MM Docket No. 94-150 et al., 10 FCC Rcd 3606 (January 12, 1995) (“Attribution Notice”).

to the affiliate. By contrast, contracts for syndicated programs involve payments -- in the form of a license fee, barter or both -- by the station to the program supplier. It is thus structurally impossible for a syndicator to purchase the power to influence station decisions. It is certainly true that, because airtime is finite, the existence of a contract pursuant to which a station commits to air a syndicated program limits the choice that the station has to air programs from another source. Plainly, however, this is not the type of limitation on a station's exercise of its programming discretion that gave rise to the program supplier attribution proposal. The Further Notice makes clear that its proposed program supplier rule is intended to apply only in circumstances where the contractual relationship in question affords an otherwise passive program supplier-investor the power "to exert significant influence" over key licensee decisions. Further Notice at ¶ 19. The structure of the economic relationship between a syndicator and television station does not confer on a syndicator the degree of influence or control over licensee decisions that impairs, or holds the "realistic potential" to impair, the goals of diversity and competition that the Commission seeks to promote.

4. The Further Notice suggests that, nonetheless, it may be desirable to apply the program supplier attribution rule in cases in which a program supplier (syndicator or otherwise) provides "significant or substantial" quantities of programming to a licensee in which the program supplier holds an otherwise non-attributable interest. Further Notice at ¶ 20. This is misguided. In the syndication context, contractual negotiations are conducted on a program series-

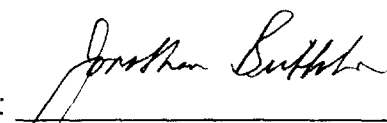
by-program series basis; and each series licensed to a station is the subject of a separate contract. It remains the case that the station licensee pays the syndicator for each series that the station elects to carry. Thus, the number of contracts between a syndicator and station licensee, and the quantity of programming covered, have no effect on the underlying economic relationship, and that relationship, by its very nature, negates any prospect that the syndicator can exercise leverage, through one or more contracts, over the station. For these reasons, the relationships between syndicators and stations do not give rise to the concerns that underlie the program supplier attribution proposal, regardless of the amount of programming that a particular station may acquire from any one syndicator or program producer.

5. King World takes no position on the threshold question whether the program supplier attribution rule is either necessary or desirable to further the goals of program diversity and competition that are ultimately at stake in this proceeding. However, if such a rule is adopted, there is, as demonstrated above, no basis for applying such a rule to syndicators. If such a rule is adopted, it should be applicable only to “networks” as that term has been defined by the Commission. See, 73.658(g)(1). That is, the term “program supplier” should be defined as those entities that offer a interconnected program service on a regular basis for fifteen or more hours per week to at least 25 affiliated television licensees in ten or more states (including any person, entity or corporation

controlling, controlled by or under control with such an entity). All other program suppliers should be excluded from the definition.

Respectfully submitted,

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